

Steven S. Kane, Esq., SBN: 061670
Bonnie E. Kane, Esq., SBN: 167700
THE KANE LAW FIRM
402 W. Broadway, Suite 2500
San Diego, CA 92101
Telephone: (619) 236-8700
Facsimile: (619) 236-1370
E-mail: skane@thekanelawfirm.com
E-mail: bonnie@thekanelawfirm.com

**Attorneys for KAREN GOWINS Creditor,
And Many Wildfire Victim Creditors**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC
COMPANY

Affects PG&E Corporation

Affects Pacific Gas & Electric

■ Affects Both Debtors

*All papers shall be filed in the Lead Case,
No.19-30088 (DM)*

-) Case No. 19-30088 (DM)
-) Chapter 11
-) (Lead Case)
-) (Jointly Administered)

-) **MOTION FOR THE APPOINTMENT OF**
-) **AN EXAMINER OF VOTING**
-) **PROCEDURAL IRREGULARITIES**
-) **PURSUANT TO SECTION 1104(c) OF**
-) **THE BANKRUPTCY CODE AND**
-) **BANKRUPTCY RULE 2007.1**

-) Date: TBD
-) Time: TBD
-) Place: United States Bankruptcy Court
-) Courtroom 17, 16th Floor
-) San Francisco, CA 94102

Karen Gowins and Many Wildfire Victims, by and through their undersigned counsel, hereby respectfully files this *Motion for an Appointment of An Examiner of Voting Procedural Irregularities Pursuant to Section 1104(c) of the Bankruptcy code and Bankruptcy Rule 2007.1.*

JURISDICTION AND VENUE

The United States Bankruptcy Court for the Northern District of California (“the Court”) has jurisdiction to appoint an examiner under 28 U.S.C. sections 147 and 1334. Venue is proper

**MOTION FOR THE APPOINTMENT OF AN EXAMINER OF VOTING PROCEDURAL IRREGULARITIES
PURSUANT TO SECTION 1104(c) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2007-1**

1 under 28 U.S.C. sections 1408 and 1409.

2 This is a core proceeding pursuant to 28 U.S.C. section 147(b)(2). The statutory bases of
3 the relief requested here are sections 1104 of the Bankruptcy Code and Rule 2007.1 of the Federal
4 Rules of Bankruptcy Procedure.

5 **BACKGROUND**

6 On January 29, 2019, the Debtors each filed the Court a voluntary petition for relief under
7 Chapter 11 of the Bankruptcy Code. No trustee has been appointed and Debtors remain in
8 possession.

9 The *Order (I) Approving Proposed Disclosure Statement for Debtors' and Shareholder
10 Proponents Joint Chapter 11 Plan of Reorganization; (II) Approving Form and Manner of Notice
11 of Hearing on Proposed Disclosure Statement; (III) Establishing and Approving Plan Solicitation
12 and Voting Procedures; (IV) Approving Forms of Ballots, Solicitation Packages and Related
13 Notices; and (V) Granting Related Relief*, (Dkt. No. 6340), states: “[t]he **Solicitation Agent**, on
14 behalf of the Debtors and the Shareholder Proponents, shall cause the Solicitation Packages
15 to be mailed by March 31, 2020, or as soon as reasonably practicable thereafter (the
16 **Solicitation Deadline**.)” p. 11:3-6.

17 The above order further states: “**The Voting Deadline. In accordance with the
18 Scheduling Order, the Voting Deadline shall be May 15, 2020 at 4:00 p.m. (Prevailing Pacific
19 Time)**” p. 19:17-18.

20 However, many Fire Victim Claimants did not receive the ballots and disclosure materials
21 mandated by the above Order of the Court, or received them after May 15, 2020, the voting
22 deadline. And, attorneys selecting the “Indirect Solicitation Method” did not receive the ballots
23 and disclosure materials until they requested them and well into April although Debtors were
24

1 required to see that they were mailed on March 31, 2020. (See Exhibits A-J)

2 Moving parties believe that a thorough, independent investigation of any fraud, neglect,
3 incompetence misconduct, mismanagement or irregularity on the part of Debtors and their
4 Noticing Agent is in the best interest of the Fire Victim Creditors in these jointly administered
5 bankruptcy cases.

6

7 **RELIEF REQUESTED**

8 By this Motion, the undersigned respectfully requests that the Court enter an Order
9 pursuant to 11 U.S.C. section 1104(c) to conduct a thorough and independent investigation of
10 potential misconduct and mismanagement on the part of the Debtors and Noticing Agent to
11 determine whether Debtors' conduct was in the best interests of the bankruptcy estate.

12

13 **ARGUMENT**

14 Section 1104(c) of the Bankruptcy Code mandates the appointment of an examiner under
15 circumstances such as those present here:

16 (c) If the court does not order the appointment of a trustee under this section, then at any
17 time before the confirmation of a plan, on request of a party in interest or the United States
18 trustee, and after notice and a hearing, the court **shall** order the appointment of an
19 examiner to conduct such an investigation of the debtor as is appropriate, including **an
investigation of any allegations of fraud, dishonesty, incompetence, misconduct,
mismanagement, or irregularity in the management of the affairs of the debtor of or**
by current or former management of the debtor, if—

20 (1) such appointment is in the interests of creditors, any equity security holders,
21 and other interests of the estate; or
22 (2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods,
23 services, or taxes, or owing to an insider, exceed \$5,000,000.

24 The list of investigations in Section 1104 (c) is illustrative, not exhaustive. *See e.g.*
25 *Gordon Props., LLC v. First Owners' Ass'n of Forty Six Hundred Condominium (In re Gordon*
26 *Props., LLC)* 514 B.R. 449, 458 (Bankr. E.D. Va. 2013). The statute's requirements for the

1 appointment of an examiner are that (1) no trustee has been appointed; (2) no plan has been
2 confirmed; (3) a party in interest or the United States Trustee has requested an examiner; and (4)
3 either (i) appointment of an examiner is in the interests of the creditors of the estate or (ii) the
4 debtors' fixed, liquidated, unsecured debts to non-insiders exceed \$5 million. The first three
5 conditions are clearly satisfied in the instant matter – no trustee has been appointed, no plan has
6 been confirmed, and parties in interest (Gowins and Many Wildfire Victim Creditors) have
7 requested an examiner. The first prong of the last condition is also satisfied, as more fully
8 discussed below, because the appointment of an examiner is in the interests of the creditors of the
9 estate. Prong two of the last condition is also met because Debtors' clearly have more than \$5
10 million in debt.

13 The appointment of an examiner is in the best interests of creditors where such
14 appointment allows for a thorough and independent examination and is necessary to be made into
15 very serious allegations. *In re JNL Funding Corp.* 438 Bank. 356 (E.D.N.Y. 2010)

16 The docket of the Court contains many examples of violations of the Court's order that
17 Fire Victim Creditors were to have ballots mailed to them or their attorneys (depending on which
18 voting method was selected) by March 31, 2020. And, the deadline to vote was May 15, 2020.
19 The following Exhibits hereto are illustrative of these violations.

21 Exhibit 'A' – demonstrates a Fire Victim Creditor did not receive a ballot until three and one-half
22 hours before the voting deadline; another Fire Victim Creditor did not receive a ballot until three
23 days before the deadline and a third Fire Victim Creditor received a ballot, but no *disclosure*
24 materials.

25 Exhibit 'B' – A Fire Victim Creditor received a voting package **after the deadline**.

26 Exhibit 'C' – A Fire Victim Creditor received a voting package **after the deadline**.

1 Exhibit 'D' – A Fire Victim Creditor received ballot **three days after the voting deadline.**
2 Exhibit 'E' - Declaration of A Fire Victim Creditor who had not received her ballot as of **May 6,**
3 **2020.**; Declaration of a Fire Victim Creditor who was bullied by her former attorney to vote
4 'Yes.' (Dkt. No. 7140)
5 Exhibit 'F' – Emergency Motion to Stay Voting Deadline, filed in the Court on **May 11, 2020**, by
6 a Fire Victim Creditor who had not received her ballot by that day. (Dkt. No. 7141.)
7 Exhibit 'G' – Affidavit of Dustin Cooper, attorney for Fire Victim Creditors, who had selected an
8 "Indirect Solicitation Method" and did not receive ballots until **May 6, 2020.** (Dkt. No. 7162)
9 Exhibit 'H' – Affidavit of Joseph Luca, attorney for Fire Victim Creditors, who had selected an
10 "Indirect Solicitation Method" and did not receive ballots until **April 24, 2020**, (Dkt. No. 7014)
11 Exhibit 'I' – Notice of Plan Voting Procedural Irregularities, demonstrating attorneys using voting
12 procedural devices to obtain "No" votes. (Dkt. No. 7069, 7069-1 through 10)
13 Exhibit 'J' – Second Notice of Voting Procedural Irregularities, delineating situations where
14 ballots not received or received very late, solicitation packages with cover letters from the wrong
15 attorneys and much suspicion and distrust by Fire Victim Creditors of the 'Master Ballot' system.
16 (Dkt. No. 7186, 7186-1 through 9)

17 Clearly, all of these samples of irregularities and utter violation of the Court's Order call
18 for examination. An examiner should be appointed as soon as practicable. Therefore, moving
19 parties request that the Court enter an Order appointing a disinterested examiner to conduct a
20 thorough examination to determine whether the Fire Victim Creditors should remain
21 disenfranchised.

22 Date: May 19, 2020.

THE KANE LAW FIRM

23 /s/ Bonnie E. Kane
24 BONNIE E. KANE

25 Attorneys for Karen Gowins and Many Wildfire Creditors